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ABSTRACT

Issues concerning tenure of college faculty and the application of tenure policies on campuses are considered. Tenure decisions typically reflect evaluations of performance and judgments about potential. Minimum eligibility requirements commonly used and typical reasons for revoking an individual's tenure status are outlined. As defined by the American Association of University Professors, tenure is designed to promote academic freedom and economic security for the faculty. Benefits that tenure may bring to the institution as a whole are noted--including creating an environment conducive to faculty undertaking long-term or higher-risk projects. Six criticisms of tenure are considered as well, such as its being a one-sided contract and a restraint on institutional flexibility. Prerequisites to establishing tenure policy, the board's role, and guidelines for a board review of individual tenure decisions are discussed. Alternatives to tenure (e.g., a tenure quota or an extended probationary period) and information about contract systems are presented along with questions that are useful to trustees in discussing tenure issues. (SW)

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The Tenure Issue

Academic tenure is "an arrangement under which faculty appointments . . . are continued until retirement for age or physical disability, subject to dismissal for adequate cause or unavoidable termination on account of financial exigency or change of institutional program."*

Within the history of American higher education, academic tenure is a relatively recent practice. The 1915 Declaration of Principles by the American Association of University Professors (AAUP) marked the acceptance of tenure as a tenet of the profession.

Academic tenure systems operate on 85% of the nation's campuses which, in turn, employ 95% of the nation's full-time faculty. All universities, nearly all four-year colleges, and some two-thirds of all two-year colleges have a tenure policy.

In the public sector, academic tenure is often a statutory provision. Also in the public sector, but more commonly in the private sector, tenure is an element of the college and university bylaws or other official documents. In other instances, tenure can be institutionalized as an unwritten matter of common practice or as an article of an agreement negotiated with a collective bargaining agent.

Nationwide, about 55 to 60% of all full-time faculty are tenured. In recent years institutions have become more selective in awarding tenure; nevertheless their tenure ratio seems to be increasing.

*Faculty Tenure, A Report and Recommendations by the Commission on Academic Tenure in Higher Education, William Kreat, Chairman (San Francisco: Jossey-Bass, Inc., 1973).

The tenure decision

Tenure decisions typically reflect assessments of performance and judgments about potential. *Minimum* eligibility requirements usually include:

Service for a probationary period, normally from 3 to 7 years although exceptions exist at both ends of this range. Completion of the probationary period represents one measure of professional experience.

Attainment of appropriate academic credentials, typically a terminal degree, i.e., the highest degree normally awarded in one's field or discipline.

Appointment to an appropriate academic rank. Some universities, for example, tie tenure to appointment to the professorial rank. More commonly, faculty must hold or be qualified to hold the associate or assistant professor rank. In a few instances, instructors are eligible for tenure. It is commonplace, but by no means required, that the tenure decision be linked to a promotion in rank.

Successful past performance, normally assessed in three broad areas: teaching, scholarship (or research), and community service. Obviously, depending upon the institution or even the department, these criteria are weighed differently. As a rule, however, at four-year and graduate institutions teaching and research are emphasized. Very few institutions require excellence in each of these three areas. Instead, excellence may be required in one or two with solid performance in the other(s).

Growth potential, the capacity and ability to continue to develop and produce as a teacher, scholar, and member of the academic community. Most often, these forecasts are based upon past performance and the value attached by students and professional peers to the teaching and research done thus far.

Candidates for tenure are either self-nominated, nominated by a colleague or supervisor at the institution, or presented for tenure in accord with a college regulation that mandates a review at a pre-determined time.

Typically, the review process entails a sequence of deliberations and recommendations often beginning at the departmental or program level and proceeding to a department chairman, a dean, a school or university-wide committee, an academic vice president and the president whose recommendation is placed before the board of trustees. At some major universities, ad hoc committees of nationally recognized scholars evaluate the candidate and report to the president.

Although tenure decisions are ultimately, like most personnel decisions, subjective in nature, a "body of evidence" is usually assembled to inform the deliberations. A typical portfolio or personnel folder includes: letters of recommendation from fellow faculty, some solicited, others not; letters from outside referees who usually focus on the quality of one's scholarship; student evaluations of teaching and advising; course outlines; one's publications and scholarly reviews of these works; and, with increasing frequency, a self-evaluation that includes some goals and objectives for the future.

Not all institutions collect all these materials and, obviously, each institution weighs the evidence differently. Nevertheless, after a review of the evidence at each level, a formal, written recommendation is added to the file as it moves on to the next level of review.

Can tenure be revoked?

Tenure is not literally a lifetime entitlement; rather, tenured status continues until retirement for age or physical disability. However, tenure may be discontinued. The most common reasons for abrogating an individual's tenured status are:

Dismissal for adequate cause which traditionally encompasses professional incompetence, acts of moral turpitude, serious violations of law, neglect of duty, insubordination, and dishonesty in teaching or research. In all cases, the institution must demonstrate manifestly adequate cause for dismissal.

Dismissal due to financial exigency. Tenured faculty members may be dismissed when fiscal conditions are so severe that survival requires the release of these persons. Within a department or across the school, the dismissal of untenured faculty must precede the release of tenured personnel.

Dismissal due to program changes. Tenured faculty members may be dismissed when an institution elects to discontinue or curtail a particular program or department. Tenured faculty under these circumstances may be dismissed only after all untenured faculty within the program or department have been terminated.

On the whole, dismissals from the tenured ranks are rather uncommon although the criteria for dismissal are rather well-established. In all instances, the burden of proof rests with the institution and due process must be provided. In many cases, tradition or contract requires the institution to make every reasonable effort to place the tenured person elsewhere within the university prior to dismissal.

The purposes of tenure

As defined in the AAUP's 1940 "Statement of Principles," tenure is "a means to certain ends—specifically, (1) freedom of teaching and research and of extramural activities and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security—hence, tenure—are indispensable to the success of an institution in fulfilling its obligations to its students and to society."

The "Statement" cites three major components of academic freedom:

1. Full freedom in research and in the publication of the results, subject to the adequate performance of other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.

2. Freedom in the classroom to discuss appropriate subjects without introducing irrelevant controversial matters.

3. Freedom to speak or write as a citizen free from institutional censor-

ship or discipline while recognizing that a teacher's special position in the community imposes special obligations. Hence, the AAUP recommends that faculty should be accurate, exercise appropriate restraint, show respect for the opinions of others, and make every effort to indicate that they are not speaking for the institution.

Tenure safeguards academic freedom, it is argued, because each time the institution tenures a person it formally bestows on him or her the privileges mentioned above. This commitment assures tenured personnel that their research and teaching may be guided by their best professional judgments, not by outside pressures or forces or by concern for continued employment.

By carefully specifying the grounds and procedures whereby tenured personnel may be dismissed, tenure protects against arbitrary and capricious personnel actions, thereby providing significant job security. Indeed, some people argue that this greater measure of job security offsets, at least in part, the higher salaries available in other sectors of the economy.

Traditionally, it has been held that tenure helps an institution to: (1) create an environment conducive to faculty undertaking long term and, perhaps, high risk projects; (2) recruit faculty members, assuming the college is not "tenured-in"; (3) look carefully at its academic personnel by forcing the institution to make an almost irrevocable decision about faculty; and (4) develop a coterie of professionals secure in their jobs who will act as constructive critics.

Criticisms of tenure

1. Critics argue that tenure is a one-sided contract binding the institution to the teacher, but not the teacher to the institution. Therefore, a tenured faculty member is effectively removed from the accountability and performance incentive implicit in periodically seeking to renew his or her contract. Moreover, the narrow grounds and lengthy procedures for dismissing tenured personnel make them virtually impervious to even the most sophisticated evaluation systems.

2. Tenure constrains institutional flexibility because each time an institution confers tenure it makes a long-term financial and programmatic commitment. It commits itself to an individual as an employee and to his or her discipline. Since these commitments are not easily withdrawn, the institution becomes that much more rigid and less capable of making commitments to other individuals and programs.

3. "If academic freedom is essential to the profession and tenure is essential to academic freedom, how can untenured faculty practice the profession?," skeptics ask. Defenders respond that the tenured faculty, by their very presence, assure untenured instructors adequate protection. Some critics counter that there is no assurance of protection, that efforts to protect usually follow the violation instead of prevent it, and that no protection exists against infringements of academic freedom perpetrated by tenured faculty.

4. By removing positions from the job market, tenure renders affirmative action more difficult; the larger the percentage of positions filled with tenured personnel, the smaller the percentage likely to be vacant. Faculty, especially in the current economic state of higher education, are reluctant to give up their tenure for jobs elsewhere. The institution, consequently, must await retirement, death, or dismissal for cause before it can hire affirmatively in this position.

5. Tenure's critics argue that state and federal law afford faculty all the freedom needed to teach, conduct research, and speak out. Moreover, critics contend, numerous court decisions have established precedents as well as a climate of opinion, especially in higher education, that provide faculty greater protection than that conferred by academic freedom.

6. In the opinion of some observers, collective bargaining agreements

that govern personnel actions and provide for due process achieve the principal purposes of tenure more effectively than tenure does. Such agreements safeguard employees from arbitrary and capricious administrative decisions, protect their jobs, and guarantee their rights to research, teach, and speak out as public citizens. Moreover, these benefits apply to all personnel in the bargaining unit, not just a privileged, tenured group.

Establishing tenure policy

Before embarking upon a consideration of tenure policies, a board should first recognize that these policies must be set within the context of the entire institution. More concretely, the board must achieve a working knowledge of the following six items and of how they interrelate:

1. Existing bylaws, rules, regulations, and relevant statutes.

2. Contracts and negotiated agreements, especially those which directly affect staffing patterns.

3. The institution's affirmative action program.

4. The institution's budget.

5. The institution's priorities.

6. A profile of the institution's faculty.

There are basically two aspects to tenure policy: the criteria upon which tenure decisions are based, and the process employed to reach these decisions. Since trustees bear ultimate as well as legal responsibility for the adequacy and equity of the process, the board should determine that the procedures are fair, reasonable, manageable, comprehensive, and bureaucratically appropriate to the institution. Additionally, the board should determine that the evidence collected and applied is well-documented, germane to the institution's mission, and manageable in volume.

Regarding the criteria upon which tenure decisions are based, the board, with appropriate participation by the college community, ought to set policies governing the probationary period, the credential or degree requirements, and the rank required for tenure. Criteria dealing with judging past performance and forecasting future contributions of personnel are best determined by faculty peers, academic administrators, and professionals in the field, although the board should insist that such criteria clearly support the institution's stated mission.

The board's role

What role should the board play generally in reviewing recommendations for tenure? Tenure decisions, at one level, require considerable familiarity with an individual's qualifications. The decision requires an assessment of the candidate's professional expertise, an assessment best rendered by other experts. Yet, at another level, a tenure decision requires familiarity with institutional needs and priorities. In general, trustees are more likely to be familiar with the institution's needs than with the individual's strengths. Consequently, the board's role should be to raise questions seeking to relate the individual's strengths to the institution's needs. Such questions include:

- Do we have the financial resources to support these tenure recommendations?
- Are these permanent appointments consistent with the school's long-term objectives?
- Will these decisions unwisely constrain institutional flexibility?
- Will they foreclose even more attractive appointments later?

As a rule, if the board feels assured that the prescribed process has been followed and the appropriate criteria applied, there should be little cause to review individual tenure decisions. The board may receive these assurances formally or informally from the president or from its normal review of faculty portfolios.

On occasion, the board (or a board committee) may elect to review personally and more meticulously some tenure recommendations *solely* to insure that the process has been followed, the proper documentation collected, and appropriate criteria ap-

plied. Carefully limited to questions of procedure and discreetly conducted, such a "spot check" should not be seen as an intrusion on faculty prerogative or as lack of support for the president.

When a board has reason to believe that institutional policies and/or procedures have not been followed, an individual tenure decision may be reviewed. The board's suspicion may be aroused by the normal review of tenure recommendations and accompanying material, by widely disparate evaluations of the same candidate, or by a conspicuously disproportionate number of either positive or negative recommendations.

While a board may be tempted to "investigate" recommendations that generate an uproar on campus, care should be exercised to review only those decisions where the board has substantial reason to believe that the established policies may have been violated.

In other words, the board ought not serve as a court of last resort for faculty, considered talented by some but found wanting by others, when established policies and procedures were equitably applied.

The risks of tenure review — and some guidelines

The risks associated with a review by the board of individual tenure recommendations are substantial. Often the board's action will be perceived by faculty and college officials as an unwarranted and inappropriate assault against faculty autonomy. Morale may sink while tension heightens. The president, too, may regard the review as an inappropriate intrusion or a vote of no confidence. Thus, such reviews should be conducted only rarely and then with great care. Guidelines developed by the board to govern such reviews should:

1. Assert the board's right to determine whether or not to intervene and the board's right to render a final decision (unless state law or negotiated contracts stipulate otherwise).

2. Establish a review procedure that assures due process and respects confidentiality.

3. Assign responsibility for the review to an appropriate board unit, such as the faculty affairs committee.

4. Prescribe the range of acceptable sanctions and remedies.

5. Describe generally those circumstances, e.g., charges of unlawful discrimination, when the board might consider matters of substance as well as process. In such instances, the board would be well-advised to consult outside experts.

More generally, all boards should, prior to undertaking a review, consider the advisability of legal counsel to assist them on matters such as due process, need for transcripts, confidentiality, use of evidence, and personal liability.

Tenure alternatives

Alternatives can be grouped into two categories: modifications *within* a tenure system and replacement of tenure with a contract system. Although within the last decade these alternatives have been adopted more frequently, modified tenure systems and contract systems are still comparatively uncommon. Outlined below are several modifications to tenure that have been applied.

1. The simplest, although not always most desirable, alternative is a *tenure quota;* that is, the establishment of a ceiling on the percentage of faculty who may be tenured at any one time. When that number is reached, no one may be tenured until a tenured position is vacated.

2. More and more institutions have elected to *extend the probationary period* that must be served to qualify for tenure. While the AAUP sets seven years as a standard, several institutions, including a few major universities, have extended the probationary period to nine or eleven years. None of these institutions have been censured by the AAUP for their action. Another way to extend the probationary period is to minimize credit for the number

of years served at another institution, but this discounting must be at the time of initial appointment at your school.

3. In the academic as well as the corporate community, more attention has been devoted to *early retirement programs.* By providing financial incentives, some universities have persuaded senior faculty to retire or accept part-time appointments at age 60 or 62 rather than retire at 65 or 70. Because more than half of all faculty members in the United States are under 40, early retirement programs are likely to have their greatest impact in the 1990s and thereafter. However, institutions with a relatively older faculty may gain some flexibility sooner from an early retirement program.

4. *The rate of tenuring (selectivity)* is the most influential factor affecting tenure ratios. If institutions make discerning judgments at the point of the tenure decision and at interim review points, the percentage of tenured faculty is unlikely to increase rapidly. Thus, increased selectivity, especially in a no-growth era, affects tenure ratios more than any other factor.

5. As noted above, tenure can be but seldom is revoked. A few campuses have instituted a *periodic review* of tenured faculty. The main purpose of such reviews has been to foster the continued professional growth of tenured professors. Where incompetence may be an issue, a periodic review presents an opportunity to prescribe remedies and document unacceptable performance. These documents are useful should action to dismiss be started.

6. At the heart of most tenure policies is the so-called "up or out" provision which stipulates that those faculty not awarded tenure must leave the institution. A few schools have *waived the "up or out" provision,* thereby allowing "tenurable" faculty to remain with multi-year contracts. When a tenure slot opens or fiscal conditions improve, these tenurable faculty receive tenure.

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Contract systems

Although there are dozens of catchwords, all alternatives to tenure are, in fact, some variation of a contract system. Under a contract system the institution enters into a legal agreement with a faculty member to employ him or her for a fixed period of time. Upon completion of the contract, neither party has any further obligation, although negotiation of a new contract is possible. Such annual or multi-year contracts are most often the basis of employment for probationary faculty under a conventional tenure system.

Many contract systems include provisions for annual or periodic review, often based upon a written statement of goals and objectives developed by the faculty member with advice from students, colleagues and academic administrators.

While contract systems seem to offer greater flexibility, the record thus far suggests that most institutions routinely renew nearly all contracts, a practice which can constrain flexibility almost as much, if not more, than tenuring-in.

It should be noted that contract systems rely heavily on frequent reviews and close contact among faculty and administrators. Thus, a contract system may not be practical for institutions with hundreds of faculty.

Many campuses have a tenure system for full-time faculty and a contract system for part-timers. A few schools, however, do maintain "dual tracks" for full-time faculty. Typically, the institution sets a percentage limit on the number that may be on either track. Assuming that number has not been reached, faculty may elect (or may be appointed) to one track or the other. In some institutions, those on the non-tenure track receive more frequent sabbaticals or other incentives to compensate for the lack of economic security.

Non-tenure track faculty may be reappointed beyond the normal probationary period whereas tenure track faculty must move "up or out."

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The whole picture

Changes in tenure policies should be the product of study and deliberation by the campus community. At the least, before a board contemplates any changes, it should have a comprehensive profile of faculty by rank, tenure status, age, salary, sex and race. Tenure decision dates for probationary faculty and retirement dates for tenured faculty should also be included. The data may be arrayed at the department, school, or university level, and then compared with readily accessible data from similar institutions.

With this data, the board can discern current conditions and future commitments. Numerous computer-based models are available to simulate contemplated changes and project their impact. Most importantly, however, the board must distinguish between a weak policy and a sound policy poorly administered, for substantially different actions will result from this determination.

Discussion Questions

Following are some questions which may be useful in discussing the issues involved in tenure and the application of tenure policies on your campus.

1. Briefly describe the employment security policies and practices that prevail in your particular industry or business. Do these policies and practices differ at various levels of responsibility within the industry or business?

2. Is there a substantial difference between academic tenure and (a) lifetime appointments for judges? (b) civil service regulations? (c) union seniority systems?

3. How is tenure "institutionalized" at your campus? What would be different about your institution if tenure were institutionalized in another way?

4. What proportion of the faculty at your institution holds tenured status? What was the percentage three years ago? What do you think it will be three years from now?

5. What proportion of your eligible faculty received tenure last year? How many faculty left prior to their being considered for tenure?

6. What criteria govern the award of tenure on your campus?

7. What processes and procedures are used on your campus to reach tenure decisions?

8. In making tenure decisions, what documentation do you, as a board, receive?

9. What are the grounds for abrogating tenure on your campus?

10. Are faculty terminations substantially different from layoffs in other industries? Are the grounds for dismissal substantially the same? The method (e.g., last hired, first fired)?

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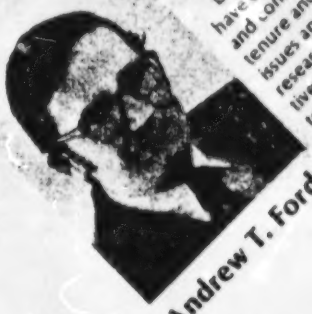

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